IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8021 OF 2004

Mr.S.S. Patwardhan for the Petitioners.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 5th October,2005

P.C.:

The present Petitioners who claim to be the legal representatives of the original Defendant No.3 made an application for setting aside the abatement of the appeal and for bringing them on record as Appellants, more than three years after the original Defendant No.3 died. He died on 18-8-2000. In the suit predecessor-in-title of the present Petitioners was Defendant No.3. Virtually, the suit was not contested by the Defendant No.3. In that suit a money decree is made.

Appeal was filed against the money decree. Execution is stayed. The Appellate Court referring to all these circumstances held that permitting the legal representatives of the original Defendant No.3, who had virtually not contested the suit, to be brought on record by setting aside the abatement of the appeal would defeat the ends of justice.

2. In my opinion, it cannot be said that the order impugned results in failure of justice. The only case on which the present Petitioners had made an application for setting aside the abatement, at such late stage, was that they were not aware of the pendency of the appeal. I do not find that they had led any evidence to show that they were not aware of the pendency of the appeal. In my opinion, the appellate court has rightly declined to accept such frivolous plea, which would have resulted in the appeal remaining pending, when the fate of the appeal was clear as the Defendant No.3 had not contested the suit. As I find

that substantial justice between the parties has been done, it will not be appropriate to interfere with the impugned order under Article 227 of the Constitution of India. Petition is disposed of.

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